

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of)	
)	OAH No. 14-1613-CSS
B W. X)	Agency No. 001132580
_____)	

DECISION AND ORDER

I. Introduction

The custodian, T R. Y, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. X's case on September 9, 2014. The obligee children are D, 10, Q, 8, and B, 2.

The hearing was convened on October 16, 2014 and completed on November 13, 2014. Both parties participated by telephone. Joe West, Child Support Specialist, appeared in person for CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, the Modified Administrative Child Support and Medical Support Order dated September 9, 2014 is affirmed. Mr. X's child support obligation for D, Q, and B is modified to \$296 per month, effective September 1, 2014. As discussed below, this is the correct amount for three children.

II. Facts

A. Procedural History

Mr. X's child support for D, Q, and B was set at \$50 per month in 2013.¹ On June 13, 2014, Ms. Y requested a modification review.² On August 8, 2014, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. X did not provide income information. On September 9, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased his child support to \$296 per month, effective September 1, 2014.⁴ Ms. Y filed an appeal on September 15, 2014.⁵ She asserts the modified order was for only two children and should have been for three children.

B. Material Facts⁶

Mr. X and Ms. Y were previously married. At the time of their divorce in 2011, they had two children, D and Q.⁷ Their third child, B, was born in 2012. The children live with Ms. Y.

¹ Exh. 1.

² Pre-Hearing Brief at pg. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ The facts are taken from the parties' testimony, unless otherwise cited.

Mr. X has a spotty work history. Wage records provided by the Alaska Department of Labor and Workforce Development (DOL) indicate that he was employed occasionally from 2010 through 2013. In 2010, Mr. X received wages of \$1,457.85 plus unemployment benefits (UIB) of \$199; in 2011, he received UIB only of \$847.60; in 2012, he received wages of \$3,129.58 plus UIB of \$58; and in 2013, he received wages of \$3,004.15.⁸ None of these jobs appear to have been year round, full-time positions.

Mr. X explained the gaps in his employment history by stating that he was incarcerated from 2011 through 2013, then for six months he attended a treatment program that concluded in May 2014. As to his current lack of employment, Mr. X maintains that on July 6, 2010, he was injured while working for No Name, and as a result of his injury, he had to have neck surgery. He said that in addition to a recent wrist fusion, he had just gotten an epidural in his neck the day before the hearing. He did not say whether the wrist procedure was related to the 2010 accident.

Mr. X acknowledged that he received a \$50,000 settlement for his injury, but that his portion was only \$14,000. The specific date of the settlement is unknown. Mr. X said he is pursuing vocational rehabilitation because he is unable to do the physical work he has done in the past, but he also said that he is currently looking for work and has filed for unemployment benefits.

Ms. Y testified that Mr. X has never worked for less than \$10.00 per hour. She said he has experience as a laborer, roofer, carpenter and cook. In addition, she said that he owns 12½ shares of Native corporation stock and receives quarterly dividends every year, which, in 2014, would have totaled \$611.79.⁹ He acknowledged he owns the shares.

Finally, Mr. X has two daughters who are older than D, Q, and B. He said he is under an order to pay support for them, but has not been doing so.

At the close of the hearing, Mr. X agreed to provide medical documentation regarding his inability to work within two weeks, but Mr. X did not submit any evidence after the hearing.

Ms. Y filed copies of screen prints that purport to show Mr. X's Facebook page on which he had posted a picture of work he did on June 12, 2014 "seal coating a driveway in No Name park. Long process."¹⁰ Another picture, a "selfie" appears to have been posted by him on

⁷ Exh. 5.

⁸ Exh. 7.

⁹ See Exh. 6 at pg. 3.

¹⁰ Exh. 9 at pgs. 1-2.

September 9, 2014 with the comment, “My self pic, after clocking in before 5 am, today. Its alright. need that cheddar!”¹¹

III. Discussion

As the party who appealed, Ms. Y has the burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order dated September 9, 2014 is incorrect.¹²

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹³ A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹⁴ In this case, the notice was issued on August 8, 2014, so any modification of Mr. X’s child support obligation for D, Q, and B would be effective as of September 1, 2014.¹⁵

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. CSSD used the Alaska minimum wage of \$7.75 per hour to calculate Mr. X’s modified child support because he did not provide any financial information.¹⁶ Ms. Y’s appeal claimed that the calculation of \$296 per month was only for two children and should have been set for three children, but that is incorrect. Unfortunately, CSSD did not submit a copy of the original calculation worksheet with the appeal exhibits, so a substitute worksheet had to be generated using CSSD’s child support calculator in order to verify the agency’s figures. The substitute worksheet, using income generated from the minimum wage of \$7.75 per hour shows that \$296 per month is, indeed, the three-child support amount.¹⁷ The caseworker who issued the modification order mistakenly recorded the support amounts in the child support order after completing the modification calculation. The two-child amount (\$242) was not recorded at all, and the three-child figure of \$296 was put on the two-child line instead of where it belonged.¹⁸ Thus, CSSD did correctly calculate Mr. X’s modified child support at \$296 per month for three children (\$242 for two children; \$179 for one child) from the income information it used.

¹¹ *Id.*
¹² 15 AAC 05.030(h).
¹³ AS 25.27.190(e).
¹⁴ 15 AAC 125.321(d).
¹⁵ *See* Exh. 2.
¹⁶ Exh. 3 at pg. 4.
¹⁷ Attachment A.
¹⁸ *See* Exh. 3 at pg. 2.

For his part, Mr. X testified that he is not able to work because of his medical condition. Having raised this issue, Mr. X has the burden of proving his earning capacity.¹⁹ An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.²⁰ Contrary to his testimony and agreement to provide medical documents, Mr. X submitted no additional evidence after the hearing. Thus, in the absence of evidence consisting of “testimony or other evidence from a physician,” Mr. X did not meet his burden of proving that he is disabled from work.²¹ As a result, CSSD’s order should be affirmed.

IV. Conclusion

As the person who filed the appeal, Ms. Y did not meet her burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated September 9, 2014 was incorrect. CSSD’s calculation was correct, even though the caseworker who prepared the order mistakenly transferred the support figures to the modification order from the calculation worksheet. For his part, Mr. X raised the issue of medical disability, but he did not submit any evidence consisting of “testimony or other evidence from a physician,” even after agreeing to do so. Thus, he also did not prove by a preponderance of the evidence that CSSD’s modification order was incorrect. The modification order should be affirmed.

V. Child Support Order

- CSSD’s Modified Administrative Child Support and Medical Support Order dated September 9, 2014 is affirmed;
- Mr. X’s child support obligation for D, Q, and B is modified to \$296 per month for three children (\$242 for two children; \$179 for one child), effective September 1, 2014.

Dated: April 24, 2015

Signed

Kay L Howard
Administrative Law Judge

¹⁹ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

²⁰ *Id.* at 1371.

²¹ Furthermore, Ms. Y submitted copies of screen prints from Mr. X’s Facebook page that suggest he was working in the months prior to the hearing. It is not necessary to discuss Ms. Y’s pictures at length because it was Mr. X’s failure to submit the necessary evidence that led to the conclusion he did not meet his burden of proof.

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days after the date of this decision.

DATED this 11th day of May, 2015.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]